No. 08-[redacted]95

In The
Supreme Court of the United States

ALEKSANDR J. STOYANOV and
YURI J. STOYANOV,
Petitioners

v.

DONALD C. WINTER,
SECRETARY OF THE NAVY; ET. AL.,
Respondents.

On Petition For Writ of Certiorari
To The United States Court of Appeals
For The Fourth Circuit

PETITION FOR REHEARING

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PETITION FOR REHEARING BY U.S. SUPREME COURT JUDGES

Petitioners Dr. Aleksandr Stoyanov and Dr. Yuri Stoyanov respectfully request that the Supreme Court Justices grant rehearing and a decision on our petition for a writ of certiorari because the lower courts denied us justice and a jury trial on the merits for each Petitioner's case[1]. The October 6, 2008 order denied our petition for a writ of certiorari and failed to take into consideration the gravity of injustice and abuse of discretion committed by the lower courts when decisions were based not on the rule of law and facts, but on the rule of misrepresentations, fraud, and perjuries of Defendants and Defendants' representative. The appeals court for the fourth circuit failed to address any issue raised by Petitioners, but in unpublished opinion affirmed the district court's wrong decision granting summary judgment on the crucial age discrimination claims. As a result, the appeals court sanctioned Defendants' intentional violations of laws, abuse of authority, fraud, and egregious discrimination against Petitioners on the basis of age[2], national origin and reprisal for participation in protected EEO discrimination and Whistleblowing activities. Accordingly, Petitioners respectfully request rehearing of the order denying a petition for a writ of

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[1] There were two separate cases RDB 05-1611 and RDB 05-1567 that were consolidated by the lower court against Petitioners' objections.

[2] The 53-years old Petitioners are twin brothers and U.S. Citizens born in U.S.S.R., filed petition for a writ of certiorari in August 2008. Both were 45 years old when Defendant King declared age discrimination to promote the 29-year old incompetent Defendant Farley in 2000.

certiorari to settle the important question of federal law in this case and restore justice.

The direct evidence of age discrimination against 45 years old Plaintiffs was established considering promotion of the 29 years old incompetent Defendant Farley one month after the 46 years old Defendant King's March 2000 email about distress for being above the average age of 44, "real paucity of employees in the 26 to 36 year age bracket," and "need for fresh ideas and enthusiastic energy of new employees," that was misrepresented by the district court Judge Bennett to deny Petitioners a jury trial. The intentional age discrimination against Petitioners was easy to prove because of direct evidence in the record and the pattern and practice of intentional discrimination against Petitioners when more than ten (10) employees with inferior qualifications were fraudulently and secretly promoted. As the second level supervisor Defendant King intentionally discriminated against the Petitioners by denying promotion, positions of leadership and excluding Petitioners from managing programs of any significance including management of special access projects. See Paper # 27, Plaintiffs' Exhibits (Ps' Ex.) 1 at ¶ 17.

There are over fourteen additional claims of intentional age discrimination with evidence in the record that Defendants violated laws, abused authority, and intentionally retaliated against both Plaintiffs in reprisal for participation in protected EEO discrimination complaint and Whistleblowing activities. Petitioners' timely and well supported motions to Compel Defendants Representative Mr. Sippel to Certify Under Penalty of Perjury the Content of Defendants filings were denied by the

district court Judge Bennett to let Defendants' representative continue misrepresentations so the district court could use deliberate misrepresentations to deny Petitioners a jury trial and grant Defendants' motion for summary judgment. See papers # 15, 19, 20, 25, 30, 34, 35. The district court misconstrued clear evidence of a series of fraudulent and secret promotions of significantly younger employees with inferior qualifications than Plaintiffs' qualifications when Defendant King violated regulations specifically requiring that "The potential for future promotion must be made known to all potential applicants" while fraudulent promotions under the "accretion of duties" were made secretly and unknown to the Plaintiffs or other potential applicants. See Paper #94 and Ps' Ex. 1 at ¶ 28-30, 20, Ps' Ex. 46 (High Grade Promotions Code 70), Ps' Ex. 10, ROI-03 p. 394 (e). In reprisal for Petitioners' filing March 2002 EEO discrimination complaints and filing disclosures with the chain of Navy command, Defendant King retaliated and by fraud transferred Petitioner Dr. Yuri Stoyanov in April 2002 to another technology department and then in conspiracy with other Defendants unlawfully removed Petitioner Dr. Aleksandr Stoyanov from employment and the Scientist position in October 2003.

The appeals court for the fourth circuit affirmed the lower court's abuse of discretion and clearly erroneous decisions based on Defendants' fraud, violations of laws and deliberate misrepresentations while the record and facts identified above and in the informal appeal to the appeals court established direct evidence and the pattern and practice of age discrimination against

Petitioners when significantly (some more than 14 years) younger individuals with inferior qualifications than Plaintiffs' qualifications - were assigned and promoted to higher responsibility positions. The limited discovery was intentionally obstructed by the Defendants' representative and record had not been adequately and properly developed. See paper # 83. During the hearing on 11/7/06, the district court Judge Bennett made contradictory orders to intimidate Plaintiffs and then denied Motions with Request for the Court Reporter to Release Audio Tapes of the Hearing to cover up abuse of discretions and tampering with the transcripts that were modified, words were deleted and replaced to change the meaning of actual statements. See paper # 85.

The appeals court for the fourth circuit failed to render justice, failed to reverse district court's wrong decisions and sanctioned judge Bennett's abuse of discretion and decisions based not on the rule of laws but on the rule of lies, deliberate misrepresentations, fraud, and perjuries of Defendants and Defendants' representative. Accordingly, Petitioners respectfully request rehearing of an order denying a petition for a writ of certiorari because the fourth circuit appeals court decision conflicts and so far departs from this Court's decisions with regard to the controlling effect of an important question:

Whether the appeals court decision sanctioned violations of laws by failing to address any issue raised by Petitioners and affirming lower court decision?

The appeals court for the fourth circuit made intentionally wrong decision clearly in conflict with this Court's decisions related to the Age Discrimination in Employment Act (ADEA) by finding no reversible error in the district court's decision that was based on Defendants' fabrications, fraud, and deliberate misrepresentations of Defendants and Defendants' representative in the motion for summary judgment. As was already presented in the petition for a writ of certiorari, this Court established in *Reeves v. Sanderson Plumbing Products, Inc, 530 U. S. 133, 140 (2000)*, what showing a plaintiff had to make regarding pretext in the age discrimination case and, specifically, whether a plaintiff could satisfy his burden by merely rebutting the defendant's false explanation for the action after establishing strong prima facie case of age discrimination. Petitioners also presented ample evidence of a pattern and practice of age discrimination and direct evidence of the selecting official's fraud, deliberate misrepresentations, perjuries, and discriminatory attitude based on Petitioners' age. In addition, this Court explained in *Watson v. Fort Worth Bank and Trust, 487 U.S. 989 (1988)*, that "[e]mployer's undisciplined system of subjective decision-making has precisely the same effects as a system pervaded by impermissible intentional discrimination" and the subjective criteria in the selection can have deleterious effects that are indistinguishable from intentionally discriminatory practices that were clearly identified by the Petitioners. Furthermore, this Court has already affirmed on February 21, 2006 in *Ash* v. *Tyson Foods, Inc.*, 126 S. Ct. 1195, that an employee's claimed superior qualifications for the

position sought could show that the employer's articulated reasons were pretextual, which Petitioners explicitly established in Petitioners' Informal Brief to the appeals court and Plaiantiff's Opposition (paper #27) in the district court. However, the appeals court for the fourth circuit ignored these case laws, evidence of intentional discrimination and retaliations, and failed to address any issue raised by the Petitioners in the appeal. Instead, the appeals court for the fourth circuit noted in its decision that "unpublished opinions are not binding precedents in this circuit" thus indirectly admitting that its decision was intentionally wrong.

The credibility of the appeals court for the fourth circuit was severely undermined when its unpublished decision was based on "the reasons stated by the district court" as those reasons clearly contradicted the published decisions of similar cases, undisputed evidence presented in the Petitioners' cases, and intervening decisions of this Court. The appeals court wrong decision in addition to its failure to address any issue raised by Petitioners call for an exercise of this Court's supervisory power to settle the important question of federal law in this case when protections guaranteed by the ADEA remedial legislation were violated and Petitioners denied jury trial. How can Petitioners vindicate by legal means violations of their rights when the appeals court for the fourth circuit failed to address any issue raised by Petitioners in the appeal and issued unpublished opinion to sanction unjust and wrong district court decisions that conflicted and far departed from this Court's decisions and published opinions in similar cases supporting Petitioners? Denial of the petition for a writ of certiorari would further undermine

credibility of the legal process and escalate violations of laws and Petitioners' rights. Accordingly, Petitioners respectfully request rehearing of the order denying a petition for a writ of certiorari to settle the important question of federal law in this case and restore justice.

Petitioners appealed to look at the Defendants' violations of laws and violations of Petitioners' rights, however, the appeals court affirmed the district court's wrong decisions that far departed from this Court decisions with regard to the crucial issue of age discrimination. Petitioners were harmed and denied jury trial because district court fragmented claims and made piecemeal rulings and decisions based not on the rule of law and facts but on the rule of lies, fraud, perjuries and deliberate violations of laws and Plaintiffs' rights. The October 6, 2008 order denying petition for a writ of certiorari further undermined protections guaranteed by the ADEA and asserted by Petitioners through legal means. Consequently, Petitioners respectfully request rehearing of a petition for a writ of certiorari to exercise this Court's supervisory power and restore justice.

Wherefore, in consideration of the above, the petition for a writ of certiorari should be granted to restore justice and settle the important question of federal law in this case.

Respectfully submitted,

Aleksandr Stoyanov Yuri Stoyanov

Dr. Aleksandr Stoyanov, Dr. Yuri Stoyanov

CERTIFICATE OF COMPLIANCE WITH THE REQUIREMENTS

1. This Petition for Rehearing complies with the Supreme Court Rule 44 (1) that it is presented in good faith and not for delay.

2. This Petition for Rehearing contains 1655 words typeset in the Century Schoolbook 12-point type font, excluding the parts of the petition exempted by the Rules.

3. This Petition for Rehearing complies with the Rule 44 (2) that it is restricted to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.

Aleksandr Stoyanov

Aleksandr J. Stoyanov

Yuri Stoyanov

Yuri J. Stoyanov